



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 102 3094]**

**Franklin Budget Car Sales, Inc.; Analysis of Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before July 9, 2012.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Franklin Auto Mall, File No. 102 3094" on your comment, and file your comment online at <https://ftcpbpublic.commentworks.com/ftc/franklinautomallconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Karen Jagielski (202-326-2509), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 7, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 9, 2012. Write "Franklin Auto Mall, File No. 102 3094" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include

any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/franklinautomallconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Franklin Auto Mall, File No. 102 3094” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue,

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 9, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

### **Analysis of Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Franklin's Budget Car Sales, Inc., also doing business as Franklin Toyota/Scion ("Franklin Toyota").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Commission's proposed complaint alleges that Franklin Toyota, a Georgia corporation, is a franchise automobile dealership that sells both new and used automobiles, leases automobiles, provides repair services for automobiles, and sells automobile parts. In connection with its automobile sales, Franklin Toyota also provides financing services to individual consumers. The complaint alleges that In the course of its business, Franklin Toyota routinely collects personal information from or about its customers, including but not limited to

names, Social Security numbers, addresses, telephone numbers, dates of birth, and drivers' license numbers. The complaint alleges that Franklin Toyota is a "financial institution" as defined in the Gramm-Leach-Bliley ("GLB") Act, 15 U.S.C. § 6801 et seq.

According to the complaint, Franklin Toyota engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for personal information on its computers and networks. In particular, Franklin Toyota failed to: (1) assess risks to the consumer personal information it collected and stored online; (2) adopt policies, such as an incident response plan, to prevent, or limit the extent of, unauthorized disclosure of personal information; (3) use reasonable methods to prevent, detect, and investigate unauthorized access to personal information on its networks, such as inspecting outgoing transmissions to the internet to identify unauthorized disclosures of personal information; (4) adequately train employees about information security to prevent unauthorized disclosures of personal information; and (5) employ reasonable measures to respond to unauthorized access to personal information on its networks or to conduct security investigations where unauthorized access to information occurred.

The complaint alleges that as a result of these failures, Franklin Toyota customers' personal information was accessed and disclosed on peer-to-peer ("P2P") networks by a P2P application installed on a computer connected to Franklin Toyota's computer network. The complaint alleges that information for approximately 95,000 consumers, including but not limited to consumers' names, Social Security numbers, addresses, dates of birth, and drivers' license numbers, was made available on a P2P network. Such information can easily be used to facilitate identity theft and fraud.

Files shared to a P2P network are available for viewing or downloading by anyone using

a personal computer with access to the network. Generally, a file that has been shared cannot be permanently removed from P2P networks.

In fact, the use of P2P software poses very significant data security risks to consumers. A 2010 FTC examination of P2P-related breaches uncovered a wide range of sensitive consumer data available on P2P networks, including health-related information, financial records, and drivers' license and social security numbers. *See Widespread Data Breaches Uncovered by FTC Probe: FTC Warns of Improper Release of Sensitive Consumer Data on P2P File-Sharing Networks* (Feb. 22, 2010), <http://www.ftc.gov/opa/2010/02/p2palert.shtm>. Files shared to a P2P network are available for viewing or downloading by any computer user with access to the network. Generally, a file that has been shared cannot be removed permanently from the P2P network. In addition, files can be shared among computers long after they have been deleted from the original source computer.

According to the complaint, Franklin Toyota violated the GLB Safeguards Rule by, among other things, failing to identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information; design and implement information safeguards to control the risks to customer information and failing to regularly test and monitor them; investigate, evaluate, and adjust the information security program in light of known or identified risks; develop, implement, and maintain a comprehensive written information security program; and designate an employee to coordinate the company's information security program.

In addition, the proposed complaint alleges that Franklin Toyota misrepresented that it implements reasonable and appropriate measures to protect consumers' personal information from unauthorized access, in violation of Section 5 of the Federal Trade Commission Act ("FTC

Act”), 15 U.S.C. § 45(a). Furthermore, the proposed complaint alleges that Franklin violated the GLB Privacy Rule by failing to send consumers annual privacy notices and by failing to provide a mechanism by which consumers could opt out of information sharing with nonaffiliated third parties.

The proposed order contains provisions designed to prevent Franklin Toyota from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits misrepresentations about the privacy, security, confidentiality, and integrity of any personal information collected from or about consumers.

Part II of the proposed order prohibits Franklin Toyota from violating any provision of the GLB Act’s Standards for Safeguarding Consumer Information Rule (“Safeguards Rule”), 16 C.F.R.

Part 314, or the GLB Act’s Privacy of Consumer Financial Information Rule (“Privacy Rule”), 16 C.F.R. Part 313. Part III requires Franklin Toyota to establish, implement, and thereafter maintain a comprehensive information security program, including the designation of an employee to oversee Franklin Toyota’s security program, employee training, and implementation of reasonable safeguards. Part IV of the order requires Franklin Toyota to obtain, for a period of twenty years, biennial assessments of its information security program from an independent third-party professional possessing certain credentials or certifications.

Parts V through IX of the proposed order are reporting and compliance provisions. Part V requires Franklin Toyota to retain documents relating to its compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third party assessments and supporting documents, Franklin Toyota must retain the documents for a period of three years after the date that each assessment is prepared. Part VI requires dissemination of the order now and in the future to persons with responsibilities relating to the

subject matter of the order. Part VII ensures notification to the FTC of changes in corporate status. Part VIII mandates that Franklin Toyota submit a compliance report to the FTC within 90 days, and periodically thereafter as requested. Part IX is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Richard C. Donohue  
Acting Secretary.

[FR Doc. 2012-14372 Filed 06/12/2012 at 8:45 am; Publication Date: 06/13/2012]